Arbitrator delivers stunning setback to Malcolm Futhey’s campaign to derail merger between UTU and Sheet Metal Workers

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Yesterday, the Opinion and Award issued by distinguished academic and arbitrator Michael Gottesman in the arbitration between the Sheet Metal Workers International Association and United Transportation Union became available to interested parties. Malcolm Futhey, president of the former United Transportation Union, had conducted a three and a half year campaign to derail a merger between the UTU and SMWIA which had been overwhelmingly ratified by UTU’s membership.

Excerpts from the decision:

“Futhey had been on the UTU Board of Directors when it voted unanimously to approve the merger, and he had publically endorsed the merger after the Board meeting…

“But Futhey’s enthusiasm began to wane sometime thereafter. Futhey also testified that he experienced “sticker shock” when he learned of housing prices in Washington, D.C., and that the increased cost of moving to Washington - as he would have to do, as the SMART headquarters would be in Washington - was tantamount to suffering a significant pay cut.

“Futhey was also miffed when [SMWIA President] Sullivan pointed out that Futhey had a higher salary under the UTU Constitution than Sullivan’s under the SMWIA Constitution., and that it would be incongruous for SMART’s third-ranking officer to have a higher salary than its first.

“Futhey was aware that Michael and Eubank, who had opposed the merger from the start, were planning to bring a lawsuit to enjoin the merger.

“Futhey made contact with Arthur Fox, the lawyer for Michaels and Eubanks, offering to provide affidavits and testimony in support of the effort to enjoin the merger. He also encouraged friends to provide financial support for the lawsuit, and even advised Fox where the lawsuit should be brought, as there was a judge friendly to Futhey on that court: indeed, Futhey’s son clerked for that judge.

“Futhey assumed the office of President of UTU on January 1, 2008. Futhey immediately directed UTU’s lawyers to advise the court that UTU did not oppose the granting of a preliminary injunction, and to explore a settlement of the case that would undo the merger.

“When they learned of this about-face in UTU’s position, a majority of members of the UTU Board of Directors…moved to intervene to defend the merger…

“Internal union charges were filed, and the Board members were ordered removed from office

“Every contract imposes upon each party a duty of good faith and fair dealing in its performance and its enforcement….

“….it was a breach of the implied obligation of good faith and fair dealing for UTU to act affirmatively in the Michael case to subvert the merger.”
“SMWIA is entitled to remedies that will provide it what UTU promised but failed to deliver: a merger pursuant to the terms of the Merger Agreement.”

The decision casts a cloud over the recent national settlement between the Futhey-led “UTU” and the freight railroads represented by the National Carriers’ Conference Committee, calling into question both Futhey’s authority to enter into such agreements, and whether the “UTU”/NCCC negotiations were affected by considerations in Futhey’s battle to resist the merger, rather than maximizing wages and benefits of the affected membership.